



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[EERE-2018-BT-STD-0018]

RIN 1904-AE39

Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters: Notification of Proposed Interpretive Rule

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of proposed interpretive rule; extension of public comment period.

SUMMARY: On January 15, 2021, the U.S. Department of Energy (DOE or the Department) published in the *Federal Register* a final interpretive rule determining that, in the context of residential furnaces, commercial water heaters, and similarly-situated products or equipment, use of non-condensing technology (and associated venting) constitutes a performance-related “feature” under the Energy Policy and Conservation Act, as amended (EPCA), that cannot be eliminated through the adoption of an energy conservation standard. On August 27, 2021, DOE published in the *Federal Register* a notification of proposed interpretive rule (NOPIR) that proposes to return to its previous and long-standing interpretation, under which the technology used to supply heated air or hot water is not a performance related “feature” that provides a distinct consumer utility under EPCA. The NOPIR provided an opportunity for submission of written comments, data, and information to the DOE no later than September 27, 2021. Prior to

the end of that comment period, several stakeholders submitted a joint request seeking additional time to consider the issues raised in the NOPIR. In light of this request, DOE is extending the comment period on the subject NOPIR for an additional 15 days.

DATES: The comment period for the NOPIR published in the *Federal Register* on August 27, 2021 (86 FR 48049) is extended to October 12, 2021. Written comments, data, and information are requested and will be accepted on and before October 12, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *E-mail: ResFurnaceCommWaterHeater2018STD0018@ee.doe.gov*. Include docket number EERE-2018-BT-STD-0018 and/or RIN 1904-AE39 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption. No telefacsimiles (faxes) will be accepted.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the COVID-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket for this activity, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at

www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket webpage can be found at:

www.regulations.gov/#/docketDetail;D=EERE-2018-BT-STD-0018. The docket webpage contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S.

Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-7335. E-mail: ApplianceStandardsQuestions@ee.doe.gov.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-5827. E-mail: Eric.Stas@hq.doe.gov.

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by e-mail: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On January 15, 2021, the U.S. Department of Energy (DOE or the Department) published in the *Federal Register* a final interpretive rule determining that, in the context of residential furnaces, commercial water heaters, and similarly-situated products or equipment, use of non-condensing technology (and associated venting) constitutes a performance-related “feature” under EPCA (42 U.S.C. 6291 *et seq.*), as amended, that cannot be eliminated through the adoption of an energy conservation standard. 86 FR 4776. On August 27, 2021, DOE published in the *Federal Register* a NOPIR that proposes to return to its previous and

long-standing interpretation (in effect prior to the January 2021 final interpretive rule), under which the technology used to supply heated air or hot water is not a performance related “feature” that provides a distinct consumer utility under EPCA. 86 FR 48049. The NOPIR provided an opportunity for submission of written comments, data, and information to the Department no later than September 27, 2021.

Prior to the end of the comment period for the NOPIR, DOE received a joint comment from the American Gas Association (AGA), the American Public Gas Association (APGA), Spire Inc. and Spire Missouri (Spire), and the National Propane Gas Association (NPGA), collectively referred to as the “Gas Industry Commenters,” requesting an additional 60 days for public comment in order to consider the issues raised in the NOPIR.¹ The Gas Industry Commenters requested additional time due to their assertion that DOE’s proposal raises various factual, technical, economic, regulatory, and administrative issues that require significant time to review and to respond in a meaningful manner. The Gas Industry Commenters also pointed out the length of the comment periods under the proceeding that culminated in the January 2021 final interpretive rule, as well as the comment extensions that DOE granted throughout that interpretive rulemaking process.

Furthermore, the Gas Industry Commenters noted that stakeholders are currently engaged in multiple DOE-related proceedings, both before the agency and the court, and each matter requires sufficient engagement. The Gas Industry Commenters also argued that the COVID-19 emergency continues to adversely impact stakeholder engagement and expressed their belief that a sixty-day comment extension will not cause a significant delay in DOE’s consideration of the record and any next steps.

¹ Available at www.regulations.gov/comment/EERE-2018-BT-STD-0018-0125.

In regard to the assertion that the August 2021 NOPIR raises various issues that require significant time to review and respond to, DOE notes the NOPIR does not raise new issues but rather proposes to return to DOE's long-standing, historical interpretation. DOE further notes that the various factual, technical, economic, regulatory, and administrative issues are well understood, have been discussed at length, and have been documented in a number of rulemaking dockets.² Also, as noted in the August 2021 NOPIR, Executive Order (E.O.) 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," 86 FR 7037 (Jan. 25, 2021), triggered the Department's reevaluation of the January 2021 final interpretive rule. 86 FR 48049, 48050-48051 (August 27, 2021).

After carefully reviewing the submission, DOE has considered the urgency required under E.O. 13990 along with the competing benefit to stakeholders in providing additional time to review and comment on the NOPIR. Accordingly, in seeking to balance the interests at issue, DOE has determined that it is appropriate to partially grant this request and to extend the comment period by 15 days, thereby allowing additional time for interested parties to prepare and submit comments. Therefore, DOE is extending the comment period for the NOPIR and will accept comments, data, and information on this matter received on and before October 12, 2021. Accordingly, DOE will consider any comments received by this date to be timely submitted.

² Energy Conservation Standards for Residential Furnaces, Docket No. EERE-2014-BT-STD-0031, and Energy Conservation Standards for Commercial Water Heaters, Docket No. EERE-2014-BT-STD-0042.

Signing Authority

This document of the Department of Energy was signed on September 19, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, D.C., on September 21, 2021.

Treena V. Garrett
Federal Register Liaison Officer,
U.S. Department of Energy